

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE CAM FERENBACH, MAGISTRATE JUDGE
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4 ORACLE USA, INC., a :
5 Colorado corporation; et :
6 al., :
7 : No. 2:10-cv-106-LRH-VCF
8 Plaintiffs, :
9 : September 3, 2019
10 -vs- :
11 : Las Vegas, Nevada
12 RIMINI STREET, INC., a :
13 Nevada corporation; et al., :
14 :
15 Defendants. :
16 _____ :
17 :

18 TRANSCRIPT OF MOTION HEARING

19 APPEARANCES:

20 FOR THE PLAINTIFFS: RICHARD J. POCKER, JAMES C. MARGOULIS,
21 KATHLEEN HARTNETT AND JOHN A. POLITO
22 Attorneys at Law

23 FOR THE DEFENDANTS: ERIC VANDEVELDE, CASEY J. McCRACKEN,
24 W. WEST ALLEN
25 Attorneys at Law

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1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 3, 2019, 9:59 A.M.

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4 THE CLERK: Oracle USA, Inc., et al., versus
5 Rimini Street, Inc., et al., 2:10-civil-106-LRH-VCF.

6 This is before the Court on a motion, dockets
7 1237 and 1238.

8 Counsel, your appearance, please.

9 MR. VANDEVELDE: Good morning, your Honor. Eric
10 Vandeveld for Rimini Street.

11 THE COURT: Mr. Vandeveld.

12 MR. McCracken: Good morning, your Honor. Casey
13 McCracken for Rimini Street.

14 THE COURT: Mr. McCracken.

15 MR. ALLEN: Good morning, your Honor. West
16 Allen on behalf of Rimini Street with my colleagues. Thank
17 you.

18 THE COURT: Thank you, Mr. Allen.

19 MR. POCKER: Your Honor, Richard Pocker, Boise,
20 Schiller & Flexner on behalf of the plaintiff Oracle entities.

21 MR. MARGOULIS: Good morning, your Honor. James
22 Margoulis from Oracle for Oracle.

23 THE COURT: Mr. Margoulis.

24 MS. HARTNETT: Good morning. Kathleen Hartnett
25 from Boise Schiller Flexner for the Oracle entities.

1 THE COURT: Hartnett.

2 MS. HARTNETT: Yes.

3 MR. POLITO: Good morning. John Polito from
4 Morgan, Lewis & Bockius for the Oracle plaintiffs.

5 THE COURT: Thank you, Mr. Polito.

6 All right. Before I -- I've read through
7 everything, I really appreciate that I got courtesy copies of
8 all the exhibits, it certainly helps.

9 And I just want to make sure first, because
10 we're talking about custodians and search terms, are we
11 talking primarily about e-mails here, or are we talking
12 exclusively about e-mails here, just to be sure. Could
13 somebody clarify that?

14 MR. POCKER: Your Honor, I don't know that it
15 would be exclusively e-mail.

16 THE COURT: Right.

17 MR. POCKER: But I think the distinction is the
18 noncustodial stuff is what's also referenced in a number of
19 places in the pleadings as technical information.

20 THE COURT: Right.

21 MR. POCKER: Those are reports and items that
22 come from Rimini's operating systems.

23 THE COURT: Right.

24 MR. POCKER: But then we have also sought
25 through a series of discovery requests custodial productions

1 from individuals.

2 THE COURT: And those are the e-mails. There
3 might be things attached to the e-mails, but --

4 MR. POCKER: Right, or they could be memoranda,
5 they could be memos to file, drafts, inner-office
6 communications other than e-mail, but that's what we're
7 talking about, custodial documents in the old sense before
8 everything was subsumed by electronic communication.

9 THE COURT: Right. Okay. I think that helps.
10 And this, I hope, is the only remaining dispute
11 having to do with postinjunction production of documents? Is
12 that fair?

13 MR. VANDEVELDE: I think it is from our
14 perspective, your Honor.

15 MR. POCKER: Well, I mean, there's a lot of
16 parts to that, your Honor.

17 THE COURT: Right.

18 MR. POCKER: But at this point in time, yes,
19 we're not getting any custodial production --

20 THE COURT: Right, right.

21 MR. POCKER: -- and we need to get that.

22 THE COURT: So if I can solve the custodial
23 problem, that should be the last brick in the wall, so to
24 speak.

25 MR. VANDEVELDE: Well, just to correct

1 Mr. Pocker, we are -- we are reviewing a reasonable set of
2 custodial documents, actually a very substantial set of
3 custodial documents, so the notion that we are not providing
4 custodial documents is not accurate.

5 THE COURT: No, no, I understand. I read all
6 that. It's okay, you don't have to protect that stuff.

7 MR. POCKER: And, your Honor, given your last
8 statement about whether this is the capstone on the whole
9 process --

10 THE COURT: Right.

11 MR. POCKER: -- there is another issue we're
12 investigating. It's really not going to be resolved obviously
13 in this context.

14 THE COURT: It hasn't been briefed or anything,
15 right?

16 MR. POCKER: There is perhaps spoliation claims
17 that we might make as well.

18 THE COURT: That would be -- that would be
19 independent. Okay. Okay, then.

20 All right. So I had one other question, then
21 I'll just hear argument. And I have an idea, of course, what
22 I want to do, but there's a lot going on here, I want to be
23 sure.

24 But so Rimini -- am I pronouncing that right,
25 Rimini? Is that right?

1 MR. VANDEVELDE: Rimini, your Honor.

2 THE COURT: Rimini --oh, okay. You know --

3 MR. VANDEVELDE: It's actually a street here in
4 Las Vegas.

5 THE COURT: Wow. No, kidding. Rimini. I
6 didn't know that, and I've been here a long time.

7 Yeah, I have a problem, a lot of our -- not to
8 cast any similarity, but a lot of my criminal defendants that
9 I have here, I'm also getting the accent wrong on the --
10 Rimini. Got it. Rimini. Okay.

11 So Rimini predicts that 19 custodians with 246
12 search terms will produce 780,000 documents. So I wonder,
13 maybe you can explain to me what process you came -- what you
14 did, what research you did to come up with that number, how
15 you can know that number.

16 MR. VANDEVELDE: Sure, your Honor. I'll go to
17 the lectern.

18 Well, each custodian that they've proposed, that
19 takes a quantum of work, approximately eight to ten hours just
20 to --

21 THE COURT: I saw the time here --

22 MR. VANDEVELDE: No --

23 THE COURT: Number of documents, that's all I
24 want to know. We'll talk about time later. But I just want
25 to know how do you know 780,000. And you're talking about

1 documents, those could be multipage documents.

2 MR. VANDEVELDE: Oh, yes, your Honor.

3 THE COURT: Okay. So how do you get that
4 number, 780,000?

5 MR. VANDEVELDE: That is taking the data from
6 those custodians and running their 240 something search terms
7 across those to see what hits, that results in almost 800,000.

8 THE COURT: Okay. So it's kind of like you
9 actually ran the -- I guess the term -- I don't want to misuse
10 it, but you ran the algorithm of the search or whatever, and
11 without actually pulling up the documents and looking at them,
12 you were able to get a count on how many documents that would
13 reveal.

14 MR. VANDEVELDE: Correct.

15 THE COURT: Okay. Great. That's exactly what I
16 wanted to know.

17 MR. VANDEVELDE: Okay.

18 THE COURT: Thank you.

19 Well, now, let's see. I guess this is Oracle's
20 motion, right, so I'll hear from Mr. Pocker first.

21 MR. POCKER: Thank you, your Honor.

22 This motion highlights a very strange conflict
23 and disconnect in this particular case.

24 On the one hand we have the context, which is
25 the enforcement of an already-adjudicated, entered,

1 upheld-on-appeal-by-the-Ninth-Circuit permanent injunction
2 issued by Judge Hicks in this case, a very weighty and
3 important matter, the enforcement of not only the Court's
4 order, but the public interest given the fact that this
5 injunction would not issue were it not in the public interest,
6 a very serious case, serious allegations with serious
7 consequences for Rimini Street, and yet, in conflict with that
8 is the Rimini Street proposal for discovery in this case which
9 can be described as nothing better than discovery-lite, which,
10 if you really boil it down to what they have proposed doing,
11 not what they're complaining about, how many e-mails they have
12 to look at, how many people they have to ask about the
13 custodial stuff, but what they're proposing as an acceptable
14 solution here, it is reverse engineering a process that will
15 result in them only having to look at 30,000 documents and
16 only having to commit a certain number of hours all for their
17 own convenience.

18 That disconnect is huge and improper here, and
19 it's what's really created a logjam of what otherwise should
20 have been a fairly orderly process.

21 As the Court knows, last January we made some
22 inquiry after the injunction went into effect in the late
23 autumn of 2018, saying, "What are you all doing? Are you
24 doing these processes? Are you engaged in this?" We got the
25 veritable stonewall.

1 We then filed a motion seeking discovery with
2 respect to their current practices which they now have
3 acknowledged have changed since the entry of the injunction,
4 and we ultimately received that after a hearing in front of
5 the Court here in April.

6 You issued an order in June, that is, June 21st,
7 setting out what the Court's anticipated discovery schedule
8 would be pursuant to the --

9 THE COURT: And that was -- I think I had asked
10 you -- I kind of ruled and asked you to get together and give
11 me an order, and then you wouldn't give me an order so I just
12 had to make one up.

13 MR. POCKER: No, that's -- that's a fair
14 assessment, your Honor.

15 THE COURT: All right. Okay. Good. I just
16 wanted to make sure -- there was a long delay there from April
17 to June, and I --

18 MR. POCKER: Yeah, no, no, no.

19 THE COURT: I don't usually take that long so --

20 MR. POCKER: And, in fact, the parties started
21 to engage in the discovery process before that, at least our
22 side of it.

23 On May 1st we issued some of the discovery
24 requests that not only request their technical information but
25 custodial documents.

1 THE COURT: Right.

2 MR. POCKER: And, finally, at the beginning of
3 July, Rimini Street agreed that they would produce custodial
4 documents, but they have yet to do so.

5 And we are now two months down the road.
6 Instead of getting to work and looking for custodial documents
7 as requested by us or the custodians requested by us, they
8 instead want to limit this entire process to this truncated
9 little offer on their part that, "Well, you know, we'll give
10 you four custodians, it can't be any more than 30,000
11 documents produced, and, you know, we're only going to do this
12 limited amount of search terms, we'll decide the search terms,
13 and that's all you're going to get."

14 And the Court -- I won't belabor all the back
15 and forth with the meet and confer --

16 THE COURT: Right.

17 MR. POCKER: -- but we're not getting there, and
18 nothing Rimini Street proposes even resembles the type of
19 discovery process that ought to be in place here to decide
20 these weighty issues.

21 We directed in our pleadings, and I won't
22 belabor the point too much here, but we followed the Court's
23 admonition to identify five respects in which we believed that
24 Rimini Street was violating Judge Hicks' injunction.

25 THE COURT: They say you really just paraphrased

1 your -- you know, your claims, you really didn't focus it
2 down, right?

3 MR. POCKER: Well, but we did, your Honor.

4 The biggest problem here is that the Ninth
5 Circuit has addressed all of Rimini Street's arguments that,
6 oh, that was Rimini I, that's yesterday, we changed it, what
7 we do in Rimini II is totally different, you know, it
8 shouldn't be at issue in this injunction, it couldn't be at
9 issue in this injunction. The Ninth Circuit has kind of shot
10 that down.

11 Every vagueness, every overbreadth, every
12 argument with the exception of two -- two small changes and
13 tweaks -- and I know the Court has seen the Ninth Circuit's
14 order, otherwise what Judge Hicks put in that injunction
15 stands.

16 And, as this Court observed in April, aptly,
17 just because it's an issue in Rimini II doesn't mean it also
18 doesn't violate the injunction in Rimini I.

19 And I think what happens here is, if I can use
20 an analogy, they say, "Well, Rimini I was us infringing in red
21 shoes, and in Rimini II we were really doing kind of the same
22 thing, but we're wearing yellow shoes, so this has to be
23 adjudicated all over again." No.

24 And the Ninth Circuit recognized it, and the
25 injunction embraces it, and our description of what they're

1 doing is as precise as it can be in the sense that we believe
2 they are still cross-using. Whether they're doing it with
3 their new tools, their old tools, or some other manner that we
4 have yet been given the option of discovering is irrelevant,
5 it's still the infringing conduct.

6 And that's why, if you look at this, we believe
7 the cross-use is still in effect for both Peoplesoft and JD
8 Edwards. There's still copying of JD Edwards source code.
9 And there's distribution, which is a major part of the
10 violations that were all adjudicated in Rimini I with respect
11 to Peoplesoft and JD Edwards.

12 The cloud hosting, I know Mr. Vandavelde wasn't
13 the attorney at that time, but Mr. Perry tried to make some
14 huge distinction about how that couldn't possibly be under the
15 injunction in Rimini I because, after all, that was only about
16 the fact that it was on Rimini's system.

17 No. Rimini I adjudicated that unless it's on
18 the customer's system, it's an infringing violation. So cloud
19 hosting and putting it places other than on the system of the
20 customer is indeed something that was embraced by the Rimini I
21 injunction and is still a potential violation if it's still
22 going on now.

23 So that's -- I mean, you think about the five --

24 THE COURT: So the five are cross-use with
25 Peoplesoft, cross-use JDE, distribution Peoplesoft,

1 distribution JDE, and then cloud hosting.

2 MR. POCKER: Copying JD Edwards source code.

3 THE COURT: Copying the source code, all right.

4 MR. POCKER: Yes, JD Edwards source code, yeah.

5 THE COURT: All right.

6 MR. POCKER: Now, there was -- we had to correct
7 our -- well, we actually just kind of tailored it down. After
8 the injunction came out, we had said access and copy source
9 code, but access source code is one of the two minor ways in
10 which the Ninth Circuit said the injunction is not accurate or
11 not viable.

12 But what remains is their copying of JD Edwards
13 source code, and then, of course, the cloud hosting of the
14 Peoplesoft software because that's the software that the
15 licenses have the facilities restriction.

16 THE COURT: Facilities restriction.

17 MR. POCKER: That was the other minor change
18 that the Ninth Circuit had, is that with respect to a couple
19 of the other software families, there were no facilities
20 restrictions in the license and so they took that out of the
21 injunction.

22 THE COURT: All right. Got it.

23 MR. POCKER: But, yeah, so that's what's at
24 issue here, your Honor. It's not -- it shows the magnitude of
25 what's going on here because, really, what we're dealing with

1 is an as yet un-totally defined Rimini 3.0.

2 You've heard that they had a system Rimini 1.0
3 which was the subject of Rimini I and then all these changes,
4 and now they have a new system 2.0 that they want the Court to
5 give them a blessing with a declaratory relief action,
6 although it's curious that they have acknowledged that they've
7 made changes in light of the injunction, so what are we doing
8 in Rimini II if it's not even their system any more?

9 There's no indication that they're going to
10 dismiss their declaratory relief action or amend or anything
11 else. So that's kind of interesting. They're acknowledging
12 that they no longer use that system, so the idea that all this
13 will all be sorted out in Rimini II, well, you know, it won't
14 actually.

15 And as the Court in our discovery hearing, I
16 know that you pushed us as to -- you know, what time frame and
17 what are you really looking at here, and at that point in time
18 Judge Hoffman had not yet amended -- or entered his order
19 allowing us to use the Rimini II information in this case.
20 Well, that gives us information through February 2018.

21 THE COURT: Right.

22 MR. POCKER: Because that's when discovery
23 closed in Rimini II. Then our injunction was initially
24 entered in August of 2018 but then stayed -- well, or delayed
25 so that Rimini could seek the stay. They didn't get a stay,

1 so it went into effect in November of 2018.

2 And as we discussed last time, the Court said,
3 well, that's the -- one of the central focus time periods is
4 November until now, and we have no custodial documents from
5 that time period as to how this implementation occurred, the
6 communications that these folks may have had with the
7 customers about the changes. All we have is them saying, "Oh,
8 you can just kind of look at certain aspects of our system and
9 you should be able to figure it out from there."

10 THE COURT: So have the parties agreed on the --
11 if custodial productions are ordered, the time period we're
12 talking about here, or is there a dispute on that?

13 MR. POCKER: Well, we have the custodial
14 production from Rimini II.

15 THE COURT: So that's through February.

16 MR. POCKER: Through February. So they should
17 be giving us --

18 THE COURT: So your position would be from
19 February '18 all the way to the present.

20 MR. POCKER: At the very least from the --
21 the -- November.

22 THE COURT: The injunction, because it seems to
23 the extent --

24 MR. POCKER: And I guess it I just --

25 THE COURT: -- reduce the load in November kind

1 of makes sense.

2 MR. POCKER: Well, again, they don't really even
3 address that.

4 I think what's frustrating about the Rimini
5 Street argument back and forth in our meet and confer and even
6 in this motion briefing is you just don't ever get custodial
7 evidence, it's not relevant, it's not pertinent, it's not
8 proportional to the issues.

9 Well, we've just outlined the issues. The
10 issues are darned important, and they're even at a context now
11 where if we can't do full discovery regarding these
12 violations, and if Judge Hicks can't have a complete record in
13 front him when we file our contempt motion, how do you ever
14 enforce an injunction.

15 And they've latched onto a couple of phrases
16 that the Court used in our last hearing about, "Well, let's
17 take a peek here, let's limit our discovery," that kind of
18 thing, to make it look as if all we're really entitled to is a
19 quick peek behind the curtain, like kind of a preview or a
20 trailer for what they're doing now, and that should be enough,
21 whereas this is where this disconnect comes in. We're talking
22 serious business here.

23 We litigated -- this Court took public resources
24 and litigated their conduct in Rimini I for eight years
25 between filing and entry of that injunction, and it's not

1 important enough to see that they're violating that? That we
2 don't get anything more than a peek behind the curtain? Or we
3 have to take their word for it?

4 And this whole issue of what are we going to get
5 from custodial discovery is one of the things -- I'm sure it
6 comes out even in the pleadings that have come since you've
7 joined the case is they're a very hands-on company over there.
8 Seth Ravin, his right-hand people, Nancy Rizkallah and
9 Mr. Grady, these are deeply involved people in the day-to-day
10 process of that company. Those folks don't do anything unless
11 they've run it by Seth and Sebastian.

12 This is not the typical -- it's not like we're
13 running e-mail searches on the chairman of General Motors
14 over, you know, a product defect case somewhere. They are
15 deeply involved in this whole process.

16 And we are entitled, and certainly -- I mean, if
17 you want to take a weight on the line, Judge Hicks needs to
18 know whether or not -- you know, what were the reasons that
19 this injunction was violated. Was it a one-off set of rogue
20 programmers who said, "We'll just" -- or employees, "We'll
21 just take the easy way out here, we'll do that even though we
22 know it's against the injunction"? Or did it come about
23 because of the way the policy was disseminated to them, "Well,
24 you can do this but you can't do that"?

25 The matter is important in the sense that do you

1 have a willful violation of that injunction? Do you even have
2 a violation of the injunction, or is it just an isolated act?

3 This type of evidence, which is easy to get,
4 they did it in Rimini I, they did it in Rimini II, even the
5 Ninth Circuit acknowledges that e-mail were one of the
6 major -- the internal e-mail from Rimini Street were one of
7 the major components of demonstrating that the injunction was
8 valid and worthwhile.

9 So we're not talking about irrelevant stuff
10 here. And then I guess it begs the question, if it's so
11 irrelevant, if they have to go through all this stuff, and it
12 has nothing to do with whether they're violating the
13 injunction, then go ahead, give it to us, it's only going to
14 show that you're in compliance, and you're thinking -- if they
15 were thinking strategically, it would be, you know, we're
16 fully in compliance now, let's get this fight over with, and
17 it's going to be a long time before Oracle is going to be able
18 to come back with any credibility and say things have changed,
19 we want another bite at this apple.

20 So I find the whole irrelevance argument beside
21 the point. So it really comes down to this notion of, "Oh, we
22 have to do too much work" --

23 THE COURT: It's proportionality.

24 MR. POCKER: And, you know what, in many
25 respects this kind of -- 30,000 documents, that's less than

1 some of these poor third-party subpoena recipients produced in
2 their case; not just reviewed, produced.

3 So, you know, if they can -- if the public
4 school system in Kansas can be required to look through 80,000
5 documents in Rimini II and produce 40,000, whatever they did,
6 the least they can do as the potential offenders of the
7 injunction is do a little legwork.

8 The idea that -- it's also -- we know they can
9 do it. They've done it in Rimini I, they've done it in Rimini
10 II, and moreover we have a situation where -- and I know you
11 didn't want Mr. Vandavelde to get into how many hours it would
12 take and all that kind of stuff, but --

13 THE COURT: Well, we can get into it now, I just
14 wanted an answer to my question is all.

15 MR. POCKER: Okay. No, I -- I don't see where
16 there's this huge burden, and it's certainly so insignificant
17 compared to what's at stake here.

18 THE COURT: All right.

19 MR. POCKER: And that's -- we're frustrated in
20 that regard, your Honor, because, quite frankly, this is a
21 form of discovery that they're proposing that no one has ever
22 authorized. Even in the simplest breach of contract case you
23 get to look for people's e-mail and then internal documents
24 regarding these things.

25 I don't know if the Court has questions about

1 the search --

2 THE COURT: Not right now. You'll get another
3 chance after I hear from Mr. Vandevælde.

4 MR. POCKER: All right. Thank you.

5 THE COURT: Mr. Vandevælde.

6 MR. VANDEVELDE: All right. Good morning, your
7 Honor.

8 And just to clarify, that roughly 800,000
9 documents number, that is documents after November 2018.

10 THE COURT: Okay. During that period. Okay.
11 That's good. Thank you for clarifying that.

12 MR. VANDEVELDE: All right. Your Honor, a few
13 months ago Oracle asked your Honor for permission to take,
14 quote, limited discovery, and your Honor granted at the
15 April 4th hearing, quote, limited discovery, but that is not
16 what's happening here.

17 There's three points I want to raise if you'll
18 indulge me. The first, I want to provide some background how
19 we got here, what we've been producing, and why Oracle has or
20 will soon receive everything it could possibly need for this
21 compliance proceeding.

22 Second, I want to discuss why the custodial
23 documents that Oracle is demanding are irrelevant in light of
24 the technical information we are providing and the access to
25 Rimini databases that we are providing.

1 And, third, I want to discuss how we have
2 tried -- I'll get into this in some detail, how we have tried
3 to work with Oracle on the issue of custodial documents.

4 So, first, some background on how we got here.

5 Earlier this year Oracle, without citing any
6 specific evidence whatsoever, accused Rimini of violating the
7 injunction.

8 Among other things, as Mr. Pocker noted, Oracle
9 says that Oracle licensees who use the cloud, unless it's
10 Oracle's cloud, are in violation of that license or are
11 infringing, and that Rimini, if we help clients who use a
12 non-Oracle cloud, that we are somehow infringing and in
13 violation of the injunction.

14 They also say that our tool, the automated
15 framework tool, AFW, which hadn't even been invented during
16 the Rimini I discovery period and thus was never litigated,
17 also violates the injunction.

18 And, third, they say that Rimini still engages
19 in cross-use in violation of the injunction even though Oracle
20 has radically expanded what cross-use means.

21 Their definition now is that if Rimini solves a
22 problem for client A, and then solves that same problem for
23 client B in the same way, then Rimini is violating the
24 injunction.

25 And let me make that more concrete. Oracle's

1 theory is literally that if a Rimini engineer from the product
2 of their own ingenuity writes ten lines of code to solve
3 client A's problem, if client B has that same problem, Rimini
4 cannot use those ten lines of code to help client B. That is
5 their radically expanded definition of cross-use.

6 So Oracle acknowledges that all of these issues,
7 every one that I just mentioned, they are fully briefed, they
8 are sitting on Judge Hicks' desk. Briefing was completed
9 almost a year ago. Cloud hosting is teed up, AFW is teed up,
10 so-called cross-use is teed up. They have been pending
11 resolution for roughly 9, 10 months.

12 THE COURT: So -- and this is in the form of a
13 contempt motion?

14 MR. VANDEVELDE: No, summary judgment.

15 THE COURT: Oh, you're talking about in --

16 MR. VANDEVELDE: Yeah.

17 THE COURT: -- Rimini II.

18 MR. VANDEVELDE: Yeah, Rimini II.

19 THE COURT: Okay.

20 MR. VANDEVELDE: There are seven summary
21 judgment motions that address all the issues that we're
22 talking about.

23 THE COURT: Oh, for this same time period?

24 MR. VANDEVELDE: For the same -- well, the
25 ruling on those will affect what is contempt or what is not

1 contempt of this injunction.

2 THE COURT: Okay. I understand.

3 MR. VANDEVELDE: So those summary judgment
4 motions represent the culmination of a staggering amount of
5 discovery. Over ten million documents were produced by Rimini
6 in Rimini II, over nine terabytes of technical data, there
7 were over a hundred depositions.

8 Oracle subpoenaed over 700 of Rimini's clients.
9 They issued over 700 third-party subpoenas. Mr. Pocker will
10 refer to them as poor third-party subpoena recipients. 700 of
11 them were subpoenaed.

12 Every single issue, again, is teed up on those
13 summary judgment motions in front of Judge Hicks.

14 So -- but last spring, we've moved forward,
15 Oracle raises the specter of contempt, asked your Honor to
16 reopen discovery. They asked for limited discovery. They
17 wanted to know what changes we have made postinjunction. We
18 have told Oracle what changes we have made, we have produced
19 nearly a hundred thousand documents of technical information
20 that show what we do on a daily basis.

21 We have also given Oracle remote access --
22 Oracle is a competitor of ours, and they are accessing
23 remotely our key development database that shows, that
24 reflects what our engineers do on a daily basis.

25 Simultaneously Oracle went to Judge Hoffman and

1 said it needed to use Rimini II discovery, that ten million
2 pages, a hundred -- all that stuff because, in their view,
3 they said, quote, they would be able to, quote, assess
4 Rimini's compliance with the Rimini injunction based on the
5 relevant discovery in Rimini II.

6 They have now flip-flopped from that position,
7 they say it's not relevant. But based on Oracle's
8 representations to your Honor and Oracle's representations to
9 Judge Hoffman, your Honor authorized limited discovery. We've
10 moved past that, we've accepted that fact.

11 But what has transpired since then is anything
12 but limited. On June 21st, your Honor authorized discovery,
13 and Rimini immediately went to work collecting or reviewing
14 and producing information.

15 Since that date we have timely responded to
16 every single discovery request often well in advance of the
17 time authorized under the rules.

18 We have made seven productions. That's roughly
19 one a week, almost a hundred thousand documents, and let me
20 tell you what those are. Those are technical files, logs,
21 database data, source code, updates, documentation, other data
22 showing Rimini's technical processes.

23 These documents show what Rimini engineers
24 actually do, and we're in the process of providing SharePoint
25 data which will be tens, if not hundreds of thousands of

1 documents more.

2 We have also provided Oracle with the AFW
3 database. That tool I referenced earlier, we have provided
4 them the AFW database, the source code for every version of
5 the AFW tool, the logs related to that tool.

6 In addition to what we've produced, we've
7 also -- as I said before, we've given them access to what --
8 the two development databases, DevTrack and Jura. Those are
9 the databases that reflect what our engineers are actually
10 doing.

11 So Oracle has, or will soon, have everything
12 they could possibly need to prove injunction compliance. Why?
13 Because these materials again show what we do, and they're the
14 only evidence necessary to show whether we're in compliance
15 with the injunction.

16 That brings me to my second point which is about
17 the relevance of custodial documents, things like e-mails,
18 instant messages, chat sessions.

19 Those are essentially irrelevant to injunction
20 compliance. Communications about conduct do not prove the
21 conduct. It's like the old adage actions speak louder than
22 words.

23 THE COURT: All right. But, I mean, Mr. Pocker
24 makes the point that if people in control, you know, it could
25 be at issue what was their intent when they did these things

1 and whatnot, wouldn't that be revealed in the communication?

2 MR. VANDEVELDE: But the injunction is about
3 technical processes.

4 THE COURT: But does it matter whether the
5 violation of the technical process was inadvertent or it was
6 done on purpose?

7 MR. VANDEVELDE: I agree that that later on will
8 be a component, and if they bring a motion for contempt, yes,
9 willfulness --

10 THE COURT: That's what we're doing in
11 discovery --

12 MR. VANDEVELDE: That will be an issue for sure,
13 and that's why we have consented to some custodial documents.

14 THE COURT: Okay.

15 MR. VANDEVELDE: But the injunction is again
16 about technical processes, it's how we provide support, it's
17 about what files are at issue, what code are we actually
18 updating, where is that code, where are the copies made.

19 I mean, I was thinking about an analogy that
20 might be appropriate. It's like if an auto mechanic was
21 enjoined from using non-OEM parts, and your Honor took your
22 car in, I mean, you don't care what the mechanic is telling
23 you, you don't care what the chitchat between him and his
24 assistant, you don't care what, you know, he says to you as
25 you pick up your car and drive off the lot.

1 What you care about is whether he used non-OEM
2 parts, and what would show that, right? It's the technical
3 information. It's the inventory logs of the mechanic showing
4 what went into your car. It's the labels on the parts
5 themselves. It's the diagnostics from the car reflecting what
6 parts were inserted. It's the videotape of the mechanic shop
7 showing what the mechanic actually did to your car, it is not
8 the communications.

9 THE COURT: But suppose that all that direct
10 evidence showed that somewhere along the line non-OEM parts
11 were used, you know, maybe it happened, life's not perfect.
12 All right.

13 So now the mechanic's company is going to say,
14 "Oh, that was inadvertent, it was a mislabeled part," or
15 whatever, and they're going to say, "Well, we've got an e-mail
16 here that says let's slide in as many OEM parts as we can when
17 nobody is looking.'"

18 MR. VANDEVELDE: I --

19 THE COURT: I'm not saying it's there, but --

20 MR. VANDEVELDE: Yeah.

21 THE COURT: -- theoretically, I'm doing
22 discovery, that's something relevant to a claim or defense.

23 MR. VANDEVELDE: Well, one, we should do that in
24 stages, and, two --

25 THE COURT: Oh, well, stages --

1 MR. VANDEVELDE: -- we have agreed, we have
2 agreed to some custodial discovery. We have agreed to the
3 maximum we can do under your Honor's schedule.

4 THE COURT: All right. Okay. I gotcha.

5 MR. VANDEVELDE: Which I'll get to in a second.

6 But, again, we have provided the type of
7 technical information that allows Oracle to do what it
8 purports to want to do which is to see whether we are in
9 technical compliance with the injunction. So that's the
10 database logs, the transaction logs, technical specifications,
11 debt instructions.

12 THE COURT: I think I understand that.

13 MR. VANDEVELDE: Yeah.

14 THE COURT: And you said something about -- hang
15 on a moment here. You said everything they could possibly
16 need is coming soon, right?

17 MR. VANDEVELDE: No, I said we have produced a
18 hundred thousand technical documents, there's more coming on
19 the way. We have until October 8th to finish production.

20 THE COURT: Well, I misunderstood you, because I
21 thought you said -- you were telling me about various things,
22 you were telling me about the background, that everything they
23 could possibly need is coming soon, the custodial is
24 irrelevant, and then you tried --

25 MR. VANDEVELDE: Maybe I misspoke, your Honor, I

1 said they either have or will have soon.

2 THE COURT: Oh, okay.

3 MR. VANDEVELDE: There's certainly processes
4 still in place. We are reviewing -- I'll get to this in a
5 moment. We are collecting reviewing and producing material as
6 we speak.

7 THE COURT: I'd like to hear about that. It --

8 MR. VANDEVELDE: Yeah, okay. So let me move to
9 that.

10 So as you've seen in the papers, there's been a
11 lot of back and forth about custodians and search terms and
12 the breadth of the search terms and the overbreadth of the
13 RFPs which we have timely objected to.

14 But at the end of the day Oracle refused to
15 narrow its custodians, its search terms, and we have literally
16 said, okay, we have this much time, we'll have -- that took
17 this much time, these discussions, we have this much time
18 left, how much can we reasonably do, what is proportional,
19 what is the cost, and we came up with a number of roughly 20
20 to 30,000 documents, and we're actually on pace to get close
21 to 40,000 documents.

22 THE COURT: That would be by October 8th?

23 MR. VANDEVELDE: By October 8th.

24 THE COURT: All right.

25 MR. VANDEVELDE: But we essentially adopted the

1 approach, your Honor, of here's a bucket, fill it with
2 whatever custodial documents you want, right, and we'll review
3 to the maximum of our ability.

4 So we tried over and over again to get Oracle to
5 prioritize its custodians, to prioritize the search terms.

6 They wanted search term hits in statistics. We
7 gave that to them.

8 They asked for our opinion on who the most
9 relevant custodians would be, we told them, they ignored it.

10 They want executives. Fine, we told them, look,
11 executives are not doing the engineering work, they're not
12 that relevant, and, two, they're the most likely to be
13 privileged, but if you want them, fine, we consented and let
14 them choose executives if they wanted.

15 We literally gave them a bucket and said, "What
16 do you want to put in this bucket? This is the maximum we can
17 do in the time remaining." And they refused.

18 And then ultimately we said, "Look, if you're
19 not going to narrow, we'll just take your search terms, we'll
20 choose the ones that cover the gamut what we're looking for,
21 and we need to start reviewing. We can't just let this
22 process drag out until you tell us, you know, what you want."

23 And so we said, "Look, we're going to review
24 these custodians with these search terms. We're going to work
25 as fast as we can. Let us know if you object," and the next

1 thing we know, they want to file this motion.

2 So we have 12 attorneys that have been reviewing
3 documents nonstop all day every day for the last few weeks.
4 They're reviewing right now as we speak at enormous cost to
5 Rimini, enormous cost to Rimini, and that wasn't good enough
6 for Oracle. They want 800,000 an order of magnitude greater.
7 It is literally impossible, unless your Honor is willing to
8 order us to hire a hundred lawyers, and still that would take
9 two months. It would cost millions and millions of dollars.

10 And so we think the motion should be denied.
11 They are getting the most relevant information, the technical
12 information that shows whether we're in compliance.

13 We are exerting ourself to the maximum we
14 possibly can in the time remaining in this schedule, and so
15 it's almost like, "What juice is there left to squeeze,
16 Oracle? You've squeezed every ounce of juice out of us."

17 So the motion should be denied. We are going to
18 continue apace reviewing as many custodial documents as we
19 possibly can. Our cue for those 12 reviewers that are
20 literally in a room reviewing document after document all day
21 every day, it's not a glamorous job --

22 THE COURT: Sounds pretty grim.

23 MR. VANDEVELDE: -- they're going to be
24 reviewing documents until the very bitter end of this.

25 So there's no more bandwidth for them to read

1 documents, because after these custodial set that we're trying
2 to get through, there's also SharePoint and other information
3 that they need to review as well.

4 So we think their motion should be denied.

5 THE COURT: Okay, I understand.

6 MR. VANDEVELDE: Thanks.

7 THE COURT: Thank you very much.

8 Okay. Mr. Pocker, briefly, you've got some
9 points. Actually, I had a question, too.

10 So it is true that you guys have remote access?
11 You can go in there and see what they're doing, is that true?

12 MR. POCKER: Well, not to everything. There's a
13 couple of their systems that we do, but, I mean, that raises a
14 point that -- I mean, there's a number of things he said that
15 I think we need to clear up for the record here.

16 First of all, this reliability of all the
17 technical information they're giving us has been called into
18 question recently because they've got one tool, it's transfer
19 files that is used to transfer updates and work to the
20 customer but then it immediately deletes the -- for lack of a
21 better term -- evidence of what was transferred on their
22 systems so that what we are getting, and this is -- and we may
23 get into it deeper if we don't resolve it with them in another
24 way, but this was this spoliation issue that I referenced
25 before.

1 This technical information that he says should
2 answer all our questions sometimes only creates more
3 questions.

4 And it's not a minor thing. The transfer files
5 mechanism could be, we believe it is, the method for cross-use
6 and distribution of copyrighted material in violation of that
7 injunction, and yet it's set up to delete all that information
8 about what it is that was sent to the customers.

9 THE COURT: You mentioned cross-use, and I
10 understand your thing on transfer file there.

11 Now, Mr. Vandavelde said that you've expanded
12 cross-use to such an extent that if one of their, you know,
13 programmers creates their own line of something to solve for
14 customer A and then they do the same work for customer B,
15 that's cross-use?

16 MR. POCKER: No. I mean, that's -- that's the
17 same oversimplified accusation we've had from the beginning.

18 THE COURT: Okay. Well, straighten me out on
19 it.

20 MR. POCKER: And actually there's 800 pages of
21 expert reports back and forth about what is or isn't
22 cross-use, and I think the salient feature here in this
23 context for what we're looking at is the cross-use notion is
24 really -- we're talking about it's this ongoing massive
25 electronic distribution of our copyrighted material.

1 It's not -- it's taking the work from one
2 client, done for one client, and then using it for other
3 clients. It's how it's done.

4 It's kind of this whole issue with the AFW and
5 the transfer file mechanisms. All they've really done is
6 figured out a different way to do what the Court said you
7 can't do the first time. This notion that we're talking about
8 it's just know-how, it's that we want to stop this engineer
9 from using what he learned, that's not what it is.

10 THE COURT: Okay. But you're saying they're
11 doing indirectly what they're prohibited from doing directly
12 it sounds like.

13 MR. POCKER: I'm sure they do indirectly.

14 THE COURT: Indirectly what the injunction
15 prohibits them from doing directly, is that kind of what
16 you're saying?

17 MR. POCKER: It's the same thing, it's like the
18 same wine in a new bottles. It's indirectly or directly, I
19 don't know if there's a precise delineation, but --

20 THE COURT: I understand.

21 MR. POCKER: -- it's a different way.

22 THE COURT: A different way.

23 MR. POCKER: And it's kind of like it's to say
24 you can't copy or you can't make derivative works.

25 THE COURT: Okay.

1 MR. POCKER: That's the injunction, and then,
2 "Well, but we did it wearing yellow shoes instead of red
3 shoes," as my analogy before.

4 So I mean, it's -- they always try to sidetrack
5 this with, "Oh, my God, you're just trying to punish our
6 know-how." That's going to be an issue in the substance of
7 the injunction proceedings or in Rimini II, wherever it
8 happens to come up, and you'll have a whole lot better record
9 in order to resolve that.

10 It really doesn't matter --

11 THE COURT: So your point is, though, if we're
12 arguing about this, it's certainly relevant so it should be
13 discoverable.

14 MR. POCKER: Sure, sure. And it's not a -- I
15 mean, that's -- it's just mystifying that custodial e-mail
16 could not be relevant in light of the concessions that have
17 already been made about the intent and why they do this, and
18 the policy of the company are certainly relevant especially if
19 they're going to come in, and you know they will.

20 If we come up with an example, oh, look, they
21 did it here, oh, that rogue employee, he shouldn't have done
22 that, our policy was this, well, we'd like to discover your
23 policy. We'd like to be able to know exactly what we're
24 doing, and it was uncontroversial in the first two cases, and
25 now all of a sudden it's a problem because it's an injunction

1 proceeding, and that's where the disconnect is, and they just
2 can't justify why it should be treated any differently.

3 I mean, all this stuff about the burden, too, we
4 made an offer somewhere in the back and forth on meet and
5 confer that, "You know, what, just run the search terms, give
6 us the stuff, we won't complain that it's a document dump, let
7 our lawyers sort it out" --

8 THE COURT: Yeah, but they're worried about
9 their privilege.

10 MR. POCKER: -- "we'll have a clawback
11 provision, you can come and get all of it back, we'll send it
12 back. We'll take the burden of the work that needs to be done
13 in a short time."

14 And I guess that's a threshold issue here, too,
15 is instead of trying to pretend like none of this is relevant
16 or that, you know, your poor associates are going to be dying
17 at eleven o'clock on Saturday night doing this, why don't you
18 just say, "I can't do it, give us 30 more days."

19 Because if that were the Court's compromise and
20 said, okay, fine, if they have to do it, they have to do it,
21 they get another month to do it, we're fine with that.

22 THE COURT: All right.

23 MR. POCKER: We want to do it right. We want to
24 get this adjudicated, but we also want to make sure that it's
25 done right.

1 So that's a red herring right there, and it's a
2 simple solution to all of this "we're having to do too much."

3 I just --

4 THE COURT: Hold on. I want to hear from
5 Mr. Vandavelde.

6 MR. POCKER: Just so the record is clear, some
7 of the other things that were said, Rimini Street stated to us
8 that they would not give us executive e-mail which is why
9 we're here. The motion for --

10 THE COURT: Yeah, I don't like to look backwards
11 in these things, I'm just trying to find a solution here,
12 okay?

13 MR. POCKER: Okay. Well, then -- but the idea
14 that somehow this was, you know, all our fault, we filed a
15 motion for no reason --

16 THE COURT: No --

17 MR. POCKER: The other thing, it's important to
18 note that the injunction was in effect, it's never been
19 stayed. It's now been held on the Ninth Circuit, and yet they
20 keep trying to get a stay by alluding to these summary
21 judgment motions in Rimini II. It's nothing more than trying
22 to postpone --

23 THE COURT: I guess you would say they're
24 seeking a stay of discovery, they're not seeking a stay of the
25 injunction, right? The injunction is the injunction.

1 MR. POCKER: Well, it's -- the practical effect
2 is the same.

3 THE COURT: If you can't do your discovery, then
4 the injunction --

5 MR. POCKER: If we don't do the discovery to
6 develop a comprehensive motion with respect to this
7 injunction, the injunction is meaningless as long as they can
8 violate it.

9 THE COURT: All right.

10 MR. POCKER: So it is, it really is just back to
11 the same old issue again, and it just comes down to -- this is
12 not that unusual conceptually of a case.

13 We have asked for reasonable things given the
14 issues, given the complexity of the businesses involved here,
15 and we have gotten as a counterproposal, a truncated
16 discovery-lite version of what they're willing to do for us.

17 THE COURT: All right.

18 MR. POCKER: And we needed the Court's
19 intervention on that.

20 THE COURT: All right. Thank you very much.

21 Mr. Vandeveld, you had a couple of --

22 MR. VANDEVELDE: I'll keep it brief --

23 THE COURT: -- very briefly on whatever it was
24 he raised that you felt was new.

25 MR. VANDEVELDE: Yeah, I'll keep it very brief.

1 I just -- I want to emphasize the noncustodial
2 sources. We have produced a vast amount of noncustodial
3 sources. Oracle's lawyers or whoever they're using, experts,
4 are literally inside our systems looking at those development
5 databases. So this is -- custodial sources are less relevant
6 and the tail of the dog here.

7 Again, our approach is we have a bucket, this is
8 the maximum amount we can do.

9 THE COURT: I understand.

10 MR. VANDEVELDE: Fill it with what you want, and
11 we will work as hard as we possibly can to get as much as we
12 can done by October 8th.

13 He suggested 30 more days. If your Honor saw in
14 our briefs, it's actually 9 months to 18 months --

15 THE COURT: I saw that.

16 MR. VANDEVELDE: -- at the current pace.

17 This delete transfer files, they can bring a
18 motion. That's fine, it's a sideshow, it's not relevant.

19 THE COURT: The spoliation issue. That's not
20 before me.

21 MR. VANDEVELDE: It's not relevant to this.

22 And I'll just put a plug in for the cross-use
23 issue because I think it's important to understand it
24 literally is their theory that if Rimini writes a line of code
25 to solve client A's problem, they can never use that line of

1 code again for Client B.

2 I took the deposition of their expert in Rimini
3 II. That is what -- she would not disavow that theory. That
4 is what their theory is. If we touch any Oracle code,
5 everything becomes a derivative work, and we can never use it
6 again. That is their theory.

7 THE COURT: All right. Okay.

8 MR. VANDEVELDE: Thank you.

9 THE COURT: All right. Thanks a lot.

10 Well, you know, I've, of course, thought a lot
11 about this, and I had a plan, and I think your arguments made
12 me more convinced that I think this plan will work, I hope.

13 You know, really, it's a proportionality issue
14 here. You know, a lot of talking about irrelevance, but -- it
15 may be marginal relevance compared to the cost, but it's
16 really a proportionality issue.

17 And so I am -- I feel a little bit like Charley
18 Brown and the football, but I am going to order the parties to
19 get together and come up with an order by September 5th for me
20 to review.

21 Now, I think I'm going to give all the specifics
22 so there shouldn't be much of a dispute about what the order
23 says, but I find when I do these kinds of orders, if I write
24 them myself, then I always get a motion for clarification.

25 So I'd like you guys to get together, and so the

1 two of you agreeing what it means, and then send it to me, and
2 if it has these provisions in it, I'll sign it.

3 Okay. So here's what -- the way we're going to
4 do it. You'll get this order to me by September 5th, and you
5 can start working already because by September 6th Oracle will
6 give Rimini a list of ten custodians and 120 search terms.

7 Oracle has complete control of those ten
8 custodian names and 120 search terms. Rimini has no input
9 into that.

10 Okay. Then by September 16th, which I believe
11 is a Monday, yeah, Rimini will make the first rolling weekly
12 production of nonprivileged documents identified using those
13 custodians and those search terms.

14 And I believe -- now, I'm only suggesting this.
15 If you don't want this, I don't care, but I think it would be
16 helpful if the productions were grouped by custodian, so, in
17 other words, you have to go through the pipelines so you're
18 going to get all of custodian A's stuff and then all of
19 custodian B's, and, I don't know, you might want to agree in
20 what order, or, if you can't, I guess I'm going to say Oracle
21 can set the order if they want to. If you don't want to do
22 that, I don't care. It might be helpful as you'll see in a
23 minute.

24 Okay. So each production you must disclose the
25 number of documents reviewed to create the rolling production,

1 the number of attorney hours devoted to this weekly
2 production, including privilege review, the actual fees to be
3 paid by the client for the attorney time quantified.

4 Now, I know, I expect, there's all kinds of
5 ways -- my intent here is that I want to get, you know, what
6 it's really costing the client, not, you know, how it's being
7 billed and it's going to be written off later and stuff like
8 that. I don't know if you can do that or not, but that's what
9 I'd like to see.

10 All right. So the actual fees to be paid by the
11 client for the attorney time quantified, and, of course, a
12 privilege log memorializing any documents withheld.

13 Now, this disclosure must be signed by at least
14 one attorney of record in the attorney's own name -- that
15 language comes right of Rule 26(g) (1) (A), one attorney of
16 record in the attorney's own name certifying pursuant to Rule
17 26(g) (1) (A) that this disclosure is complete and correct.

18 All right. Then Rimini will pay the attorney's
19 fees for the first hundred thousand documents produced. For
20 the next 200,000, the cost will be shared 50-50, and if you go
21 up over -- that would be the 300,000 documents, then Oracle is
22 going to pay for everything over 300,000.

23 All right. So that's what I'd like the order to
24 say.

25 And, finally, we'll set a status hearing for

1 30 days from today to see how the production is going and to
2 consider whether we need to change the discovery cutoff dates
3 which right now the discovery cutoff date is still
4 October 8th, and October 20th is the deadline for filing the
5 motion for order to show cause.

6 All right. So that's what I want to see in the
7 order.

8 Now, here's my thinking. You know, a lot of
9 predicting about what's this going to cost, how much time is
10 this going to take, we'll have, you know, two or three weeks,
11 we'll see what's happening here, and then, you know, the
12 attorneys can decide whether it makes sense.

13 You know, I've solved this proportionality
14 problem this way before by allocating costs between parties.
15 You know, the numbers I fixed were kind of necessarily
16 arbitrary, but my thinking was, we're talking about 800,000,
17 I've cut it by about half, so I went down to 400,000, and I
18 put it in the gradual -- you know, cost shifting from one
19 party to the other.

20 All right. So does anybody want to have any
21 questions, I guess?

22 MR. VANDEVELDE: I have some questions, your
23 Honor.

24 THE COURT: Okay.

25 MR. VANDEVELDE: This is just about other

1 aspects of your Honor's schedule that was set. I believe
2 Oracle's affirmative expert reports are due in two days.

3 THE COURT: Ah, I forget about that.

4 MR. VANDEVELDE: And the rebuttal reports are
5 due only a week later. So, you know, I see two issues.

6 THE COURT: Okay. I forgot about the experts.

7 MR. VANDEVELDE: I see two issues with the
8 current schedule. One is that the discovery cutoff, whether
9 it's October 8th or some other date in the future if Oracle
10 gets additional documents, that is after expert disclosure.

11 THE COURT: Right.

12 MR. VANDEVELDE: So what that is inviting a
13 serial --

14 THE COURT: No, you're right, you're right. I
15 forgot about the experts.

16 So, okay, I'm going to vacate the October 8th
17 and the experts until we have our status hearing.

18 MR. VANDEVELDE: Perfect.

19 THE COURT: I'm sorry, I forgot about the
20 experts. Yeah, let's just do that. So those deadlines are
21 gone. Focus your efforts, you know, on getting through these
22 documents.

23 You know, I'm sure you sincerely predict, you
24 know, what the burden is going to be, see how you're doing, I
25 mean, you know how it's going to be allocated. If they want

1 to hire up more attorneys so they can get 500,000 documents, I
2 mean, you guys can figure out how you're going to do that.

3 But, you know, I think that's a fair way to do
4 it. The -- the custodian discovery, they have to have some
5 shot at custodian discovery. After they see the first ones
6 they've picked, if it's not going anywhere, then maybe they'll
7 decide, you know, this is, in fact, not worth it.

8 But -- you see what I'm saying?

9 MR. VANDEVELDE: You know, I totally agree, your
10 Honor.

11 The other thing I wanted to raise is privilege
12 log. So throughout -- I wasn't involved in Rimini I, but I've
13 been involved for many years now with Rimini II.

14 The parties' practice has been to send privilege
15 logs at some point after, and that works well with the way the
16 vendor works and the attorney-client --

17 THE COURT: You need more time for the privilege
18 log?

19 MR. VANDEVELDE: So the privilege log, there
20 needs to be some delta. It's just unfeasible for us to do --

21 THE COURT: Okay. I get it, I get it.

22 MR. VANDEVELDE: Yeah.

23 THE COURT: That's been the practice. You agree
24 with that, Mr. Pocker, some delay on the privilege log?

25 MR. POCKER: I'll have to defer to my colleague

1 as to --

2 THE COURT: Okay. Whoever knows over there.

3 MR. POLITO: That's right, your Honor. We
4 previously have stipulated delay on the privilege log.

5 THE COURT: So what usually is the --

6 MR. POLITO: The stipulation is (inaudible).

7 MR. VANDEVELDE: I was going to say I think
8 that's something we can work out.

9 THE COURT: Put it in the order. Yeah, okay.
10 Put it in the order. That's great.

11 MR. VANDEVELDE: Okay.

12 THE COURT: So delay, that's fine.

13 Okay. Anything from Mr. Pocker?

14 MR. POCKER: Well, your Honor, just one point of
15 clarification. A number of the observations you made count
16 off the number of documents that are produced --

17 THE COURT: Right.

18 MR. POCKER: -- and all that. I take it we're
19 talking about nonidentical documents there?

20 THE COURT: Well, I mean, okay. I see what
21 you're saying.

22 MR. POCKER: If we get 50,000 copies of the same
23 document --

24 MR. VANDEVELDE: Well, your Honor, the 800,000,
25 that is unique documents.

1 THE COURT: Those were unique documents.

2 MR. VANDEVELDE: We're working on a unique
3 document universe. I don't think --

4 THE COURT: Okay. That sounds like that's
5 agreeable to both sides. So, yeah, just make it unique
6 documents.

7 I mean, I don't know what's a unique document.
8 Of course, when I did this it was not near as sophisticated as
9 it is now, but, you know, you can have the same document and
10 somebody scribbled some notes on one document, it's not on
11 another, you know, that can be pretty important what note was
12 scribbled on the document.

13 MR. POCKER: Well, but that -- I think we would
14 probably say the one with Seth Ravin's handwritten notes is a
15 unique document.

16 THE COURT: Okay.

17 MR. VANDEVELDE: It's all software. Software
18 will determine what's unique and not. If there's a
19 handwritten document, it's not going to be to have the same
20 hash value, it will not be considered unique -- it will be
21 considered unique if there's a difference.

22 THE COURT: Right. And also there's these
23 things where you -- you know, you can put little comments
24 electronically on the documents and stuff, but that's all
25 identifiable in the search, I'm sure, so each one would be

1 unique if they had unique --

2 MR. POCKER: Well, we just didn't want to be
3 paying for 5,000 copies of the same thing.

4 THE COURT: Well, right, and I -- you know,
5 that's not going to happen. I think -- I mean, I got to tell
6 you, you know, as everyone realizes, an intense case, people
7 working hard, it's very important.

8 But even though you had to file this motion, I
9 don't think it was fault on any side. You know, it's a tough
10 issues to work through. I thought you did a good job. Thank
11 you.

12 THE CLERK: Do you want to set the status check
13 date, your Honor?

14 THE COURT: Oh, yeah. What's that date, Jerry?

15 THE CLERK: October 7th, 2019, 1:00 p.m., and
16 that will be here in courtroom 3-D.

17 THE COURT: Okay. Thank you.

18 -o0o-

19
20 I certify that the foregoing is a correct
21 transcript from the record of proceedings
in the above-entitled matter.

22 /s/Margaret E. Griener 9/8/2019
23 Margaret E. Griener, CCR #3, FCRR
24 Official Reporter
25